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13 Attorneys for Defendant
14 ULTA SALON, COSMETICS &
FRAGRANCE, INC.
15

16 UNITED STATES DISTRICT COURT
17 EASTERN DISTRICT OF CALIFORNIA
18 SACRAMENTO DIVISION
19

20 SARAH FRAZIER, an individual,

21 Plaintiff,

22 v.

23 ULTA SALON, COSMETICS, &
24 FRAGRANCE, INC., a Delaware
corporation and DOES 1-10, inclusive,,

25 Defendant.
26
27

Case No. 2:20-cv-01608-TLN-DB

**Joint Stipulation to Modify the Initial
Scheduling Order; Order Thereon**

**Complaint filed:
08/11/2020**

**Amended Complaint filed:
09/10/2020**

28 Plaintiff Sarah Frazier ("Plaintiff") and Defendant Ulta Salon, Cosmetics &

1 Fragrance, Inc. (“Defendant”) (collectively, the “Parties”), by and through their respective counsel of
2 record, hereby agree and respectfully stipulate as follows:

3 **WHEREAS**, Plaintiff filed her Complaint on August 11, 2020, but did not serve
4 Defendant with this Complaint. Instead, Plaintiff filed a First Amended Complaint on September 10,
5 2020 (ECF No. 5), and served Defendant with the First Amended Complaint on September 15, 2020,
6 and Defendant answered on October 20, 2020;

7 **WHEREAS**, on October 29, 2020, the Parties met and conferred regarding Plaintiff’s
8 contention that Defendant’s Answer was deficient, and in turn, Defendant agreed to file an Amended
9 Answer, and did so on November 20, 2020;

10 **WHEREAS**, on August 12, 2020, this Court issued its Initial Scheduling Order, which
11 requires the Parties to complete discovery no later than 240 days after the last day that a defendant
12 may answer the complaint (which here was October 20, 2020). Accordingly, the current discovery cut
13 off is June 17, 2021 (making the deadline for either party to serve any further discovery requests May
14 18, 2021).

15 **WHEREAS**, pursuant to Federal Rule of Civil Procedure (“FRCP”) 26(f), the Parties
16 exchanged initial disclosure statements and documents on December 14, 2020. Thereafter, over the
17 next five months, the Parties propounded and responded to written discovery requests, and met and
18 conferred to resolve alleged deficiencies in the discovery responses, including serving amended
19 discovery responses, as well as engaging in efforts to streamline Defendant’s search for Electronically
20 Stored Information (“ESI”) pursuant to Plaintiff’s discovery request.

21 **WHEREAS**, the Parties have diligently pursued written discovery, but have yet to take
22 depositions. The Parties have attempted to set depositions, but have encountered issues locating
23 pertinent witnesses (namely, former employees of Defendant). Both Parties wish to take depositions
24 of certain witnesses, but will not be able to do so prior to the current discovery cut off, which is only
25 a month away.

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1 **WHEREAS**, the Parties have agreed to pursue early mediation of this matter in hopes
2 to reach a reasonable, global resolution of the lawsuit and to prevent any further need for further
3 written discovery, and trial preparation. However, the Parties have further agreed that prior to
4 submitting to early mediation, the Parties shall each take the limited depositions of Plaintiff and two
5 of Plaintiff's former managers (who are both former employees of Defendant).

6 **WHEREAS**, good cause exists to modify the Court's scheduling Order as follows:

7 The district court is given broad discretion in supervising the pretrial phase of
8 litigation..." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992) (citation and
9 internal quotation marks omitted). "A schedule may be modified only for good cause and with the
10 judge's consent." Fed. R. Civ. P. 16(b)(4); see e.g. *Spiller v. Ella Smithers Geriatric Ctr.*, 919 F.2d
11 339, 343 (5th Cir. 1990) (court impliedly granted motion to modify scheduling order by allowing
12 summary judgment motion after pretrial motion cut-off date).

13 To establish "good cause," parties seeking modification of a scheduling order must
14 generally show that, even with the exercise of due diligence, they cannot meet the order's timetable.
15 *Johnson, supra*, 975 F.2d at 609; see e.g., *Hood v. Hartford Life & Acc. Ins. Co.*, 567 F.Supp.2d 1221,
16 1224 (E.D. Cal. 2008) (granting request for modification that was promptly made when it became
17 apparent that compliance with the scheduling order was not possible). In determining "good cause,"
18 courts also consider the importance of the requested modification, the potential prejudice in allowing
19 the modification, and, conversely, whether denial of the requested modification would result in
20 prejudice. *Southwestern Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 546 (5th Cir. 2003) (involving
21 amendment of pleadings).

22 Here, good cause exists for a modification of the Court's scheduling order given the
23 Parties' inability to complete necessary discovery within the Scheduling Order's timetable. This matter
24 was initially filed on August 11, 2020; however Plaintiff did not immediately serve Defendant. By the
25 time Plaintiff served Defendant with her First Amended Complaint, and Defendant filed an Amended
26 Answer and the Parties exchanged their Rule 26(f) disclosures, less than six months remained within
27 the current Scheduling Order's timetable to complete all necessary discovery. Even then, the Parties
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1 diligently engaged in written discovery efforts, including a request that Defendant conduct a search of
2 voluminous ESI, which took several months to complete. Now, the Parties have agreed to submit to
3 early mediation and hope to reach a global resolution of this matter, but will need additional time in
4 order to complete limited depositions prior to a mediation. However, if mediation is unsuccessful, the
5 Parties will need additional time to conduct further, and complete, discovery, as well as prepare for
6 trial.

7 **THEREFORE, upon good cause shown,** the Parties stipulate to continue the
8 discovery cut off (and related deadlines) out by a minimum of 180 days (which would be December
9 14, 2021 for the discovery cutoff).

10 Dated: May 19, 2021

KING & SIEGEL, LLP

11
12 /s/ Robert J. King (As authorized on 5/19/2021)

13 JULIAN BURNS KING

ELLIOT J. SIEGEL

14 ROBERT J. KING

Attorney for Plaintiff

15 SARAH FRAZIER

16 Dated: May 20, 2021

LITTLER MENDELSON P.C.

17
18 /s/ Nathaniel H. Jenkins

19 BARBARA A. BLACKBURN

NATHANIEL H. JENKINS

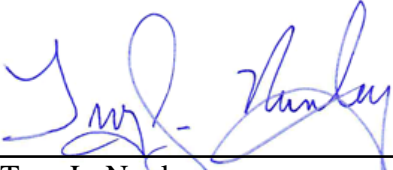
20 Attorneys for Defendant

21 ULTA SALON, COSMETICS & FRAGRANCE,
INC.

22 **ORDER**

23 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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25 Dated: May 20, 2021

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Troy L. Nunley
United States District Judge